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ACTIVITIES RELATING TO SPECIFIC PROVISIONS OF THE SET: TECHNICAL ASSISTANCE, ADVISORY AND TRAINING PROGRAMMES ON RESTRICTIVE BUSINESS PRACTICES

Review of technical assistance activities

Note by the UNCTAD secretariat

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INTRODUCTION

1. It is recalled that in paragraph 6 of section F, the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices calls for technical assistance, advisory and training programmes on restrictive business practices (RBPs), particularly for developing countries.

2. In the resolution adopted by the Second United Nations Conference to Review all Aspects of the Set, the Conference decided that the implementation of the Set should be strengthened, and to this end agreed on the following with respect to technical assistance:

> "10. Recognizes the importance of both bilateral and multilateral technical assistance as an important way to secure the implementation of the Set. Both types of technical assistance are especially effective in introducing large groups of officials from several countries to basic restrictive business practices control principles and have been very effective in providing in-depth technical co-operation between restrictive business practice control authorities, particularly where it can be tailored to specific needs;
>
> "11. Notes the commitment of States members of Group B to continue to provide technical assistance on both a bilateral and multilateral basis, subject to the availability of resources and tailored to the requirements of individual countries or groups of countries;
>
> "12. Concludes that the UNCTAD secretariat's proposals for a framework for technical assistance in its report TD/RBP/CONF.3/4 contain useful elements. [...]
>
> "13. Requests the UNCTAD secretariat to take into account the costs of the various types of technical assistance and the most effective use of resources and to undertake a regular evaluation of its technical assistance activities in order to determine their effectiveness;
>
> "14. Invites the UNCTAD secretariat to continue organizing national, regional and subregional seminars, workshops and symposia, as appropriate, including with respect to regional groupings of States willing to adopt restrictive business practices control systems;
>
> "15. Urges intergovernmental organizations and financing programmes, in particular the United Nations Development Programme (UNDP), to provide the necessary resources for the activities mentioned above;
>
> "16. Appeals to States, in particular developed countries, to increase voluntary financial contributions and to provide necessary expertise for the implementation of the activities mentioned above."

I. REVIEW OF TECHNICAL ASSISTANCE ACTIVITIES

3. In line with the requests made at the Second United Nations Review Conference, the UNCTAD secretariat has been able to expand substantially its technical assistance activities in 1991. Two main reasons may be given for this development.

4. First, on the demand side, a considerable interest in competition policies and RBP control has been expressed by the developing countries, as well as by countries in transition from centrally-planned to market economies. A major reason for this relates to the economic reforms and structural adjustment plans adopted in a growing number of countries which, *inter alia*, involve a reduction of government intervention in the economy - often materialized by deregulation, divestment of State monopolies and privatization, as well as by the dismantling of subsidies and the liberalization of prices - to conform to market mechanisms. Both aspects are closely related to the issues of competition and restrictive business practices and, more generally, corporate policy (i.e. the role of enterprises in the national economy). In particular, in the case of price liberalization and deregulation, it is clear that existing monopoly structures would hamper the

smooth functioning of the market mechanism and the setting of competitive prices to the advantage of consumers, as well as the results of the economic reform as a whole. Hence the considerable interest shown by many countries for the creation of an appropriate framework for competition, and for the adoption of appropriate legislation and implementation of judicial and adminstrative procedures of the control of RBPs, as called for in paragraph 1 of section E of the Set of Principles and Rules.

5. Secondly, with respect to the resources necessary for technical assistance, financial contributions have been provided for some specific projects. As a result of economic reforms taking place in their national economies, some developing countries have integrated a competition/RBP component into their UNDP Country Programme. Such competition/RBP components - for countries having no previous experience in this area - generally involve three or four main stages[1]:

(i) The holding of an introductory seminar aimed at sensitizing the Government and academics, as well as business and consumer-oriented circles, to the importance of competition policy and to the need for appropriate "tailor-made" RBP control legislation;

(ii) Once it is so decided by the Government, the preparation of national RBP control legislation. Upon request, this may involve advisory services and assistance by high-level experts;

(iii) The training of national officials responsible for the implemention of the RBP control legislation, once it has been adopted. This may involve on-the-job training; internships at foreign RBP control authorities' premises abroad, for given periods of time, as may be arranged with RBP control authorities in countries having experience in the area of competition; or training workshops and seminars to be organized in the country in question;

(iv) A possible fourth element which could include "institution building", i.e. assistance in the establishment of the RBP control authority and its implementation.

6. Two countries, so far, have integrated an RBP component into their UNDP Country Programme, namely Ghana and Zambia.

7. Under the Ghana "Umbrella project for strengthening development planning" (Component XXV, RBPs Project No.GHA/85/010/Q/01/31), an introductory seminar was held in Accra (Ghana) from 25 to 27 February 1991. Another introductory seminar was held in Lusaka (Zambia) from 6 to 8 March 1991.

1. The Ghana country project

8. The Ghana seminar was opened by the Secretary of the Ministry of Trade and Tourism and was attended by high-level officials from the same Ministry, the Ghana Investment Centre, the Attorney-General's Department, the Prices and Incomes Board, the Cocoa Marketing Board, the Ghana Supply Commission, and the National Chamber of Commerce. The main issues covered during the seminar - and on which presentations were made by two UNCTAD staff members and one invited high-level expert from Germany - were:

(i) a general presentation of competition and RBP issues; definitions and basic features;

(ii) an introduction to the links of competition policy with price liberalization, deregulation, privatization and foreign investment; and

(iii) a general overview of judicial and administrative action for the control of RBPs in developed and other developing countries.

On the last day of the seminar, there was a round-table discussion for evaluation and follow-up action.

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1 Similar action was proposed in paragraph 71 of the UNCTAD report on technical assistance activities submitted to the Second United Nations Review Conference (TD/RBP/CONF.3/4).

9. Subsequently, the UNCTAD secretariat was informed by the Government of Ghana that it had decided to undertake stage two of the project, namely the drafting of legislation. Advisory services have been requested for this from UNCTAD, and the work is currently in progress.

2. *The Zambian country programme*

10. The Zambian introductory seminar was opened by the Prime Minister and was attended by high-level officials of the Prices and Incomes Commission, the Cabinet Office, the Investment Council, the National Commission for Development Planning, the Bank of Zambia, the Zambia Industrial Mining Corporation (ZIMCO), the Zambian Confederation of Industries and the Chambers of Commerce, and the Consumer Protection Association.

11. The seminar agenda covered broadly the same issues as the Ghana seminar. In addition to the presentations made by the UNCTAD secretariat and an invited high-level expert from the Netherlands, presentations were made by Zambian experts on "Control of RBPs in the context of economic policy in the light of consumer protection", "State enterprises and deregulation and privatization in Zambia", "Interface between State-owned enterprises and the private sector", and "Price control versus price liberalization". At its conclusion, the seminar adopted proposals for follow-up action and a list of concrete recommendations to the Government. Further stages of the project are being implemented.

3. *National Seminar on Restrictive Business Practices - Jakarta, Indonesia*

12. In line with the commitment of States members of Group B to continue to provide technical assistance, as expressed in paragraph 11 of the resolution adopted by the Second Review Conference and in response to the appeal of voluntary contributions in paragraph 16 of the same resolution,[2] the Government of the Netherlands made a voluntary contribution to UNCTAD's Trust Fund on restrictive business practices. This enabled the UNCTAD secretariat to organize, in co-operation with the Ministry of Trade of Indonesia, a National Seminar on Restrictive Business Practices for Indonesia, which took place in Jakarta on 12-14 June 1991. Opened by the Minister of Trade, the Seminar was attended by high-level officials from the Ministries of Trade, Foreign Affairs, Finance, Industry, Justice, Agriculture, the Investment Coordinating Board, and by representatives of business and academic circles. Lectures included two high-level experts from the Netherlands and Sweden, and two UNCTAD staff members.

13. As with other national seminars, the objective was to present to members of the Government the various issues concerning competition policy and restrictive business practices. These were placed in the context of economic changes taking place in the world, globalization and economic reform, possible outcome of the Uruguay Round, and economic reforms taking place in Indonesia, including the issues of price liberalization and privatization. The central role of competition policy and the need to control restrictive business practices in Indonesia were given prominence.

14. At the closing round-table meeting, the Seminar put forward conclusions and recommendations which were submitted to the Department of Trade of the Republic of Indonesia for further action, including legislation and technical assistance.

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2 As reproduced in paragraph 2 of this note.

4. The Subregional Workshop on Restrictive Business Practices for the Association of South-East Asian Nations (ASEAN)

15. At the request of the Government of the Philippines, a workshop for ASEAN countries, to be financed by the Netherlands' contribution, was scheduled to take place in Manila, on 19-21 June 1991, the week following the Jakarta seminar. This was planned in order to maximize benefits in relation to costs by taking advantage of the presence in the region of the experts from the Netherlands and Sweden and UNCTAD staff, to minimize travel expenses. Unfortunately, the eruption of the Pinatubo Volcano made it impossible for foreign participants to reach Manila as the airport was closed. The Workshop has now been postponed to 20-22 November 1991.

5. Symposium on Corporate Policies and Competition for Development - Seoul, Republic of Korea

16. As part of UNDP regional project for Asia and Pacific RAS/86/020/1/01/40, UNCTAD is organizing a symposium on competition/restrictive business practices, in cooperation with the Korean Development Institute, for Asian and Pacific countries non-members of ASEAN (ASEAN members will participate in the Manila Seminar). This symposium is scheduled to take place in Seoul, Republic of Korea, on 11-13 September 1991.

6. Seminar on Competition (for experts from India, Sri Lanka and Thailand) - Bangkok, Thailand

17. As part of their contribution to UNCTAD's technical assistance, advisory and training programmes, the German Government, through the German Foundation for Development (DSI) and in cooperation with UNCTAD, is organizing a five-day training seminar for staff members of the restrictive business practices control authorities of India, Sri Lanka and Thailand. The seminar is scheduled to take place on 16-20 September 1991 in Bangkok, Thailand.

7. Training Seminar in Tunisia

18. As part of the voluntary contribution received from the Government of the Netherlands, it is planned to organize a restrictive business practices training seminar for the Tunisian authorities in the third quarter of 1991 or the first quarter of 1992.

II. INFORMATION REGARDING NEEDS FOR FURTHER TECHNICAL ASSISTANCE

1. Funding available for technical assistance

19. Before embarking on a detailed evaluation of needs, it is first necessary to indicate the extent to which funds are currently available. Since the 1991 Second Review Conference, two countries - namely the Netherlands and Norway - have made additional voluntary contributions to the

UNCTAD Restrictive Business Practices Trust Fund. To date, except for the voluntary contribution received at the end of July 1991 from Norway, all RBP contributions, including UNDP regional funds for corporate policies, have been fully earmarked or used. Additional contributions to the Trust Fund are essential to support the efforts of developing countries to introduce appropriate competition policies and RBP legislation.

2. *Requests for technical assistance*

20. With regard to the requests for technical assistance reported in paragraph 66 of TD/RBP/CONF.3/4 submitted to the Second United Nations Review Conference, and to the new requests received, table 1 sets out the status of advancement of the technical assistance programmes.

Table 1: Status of RBP technical assistance programmes

Request received from:	A - Regional seminar or workshop	B - National		
		Stage I National Seminar	Stage II Drafting of Legislation	Stage III Training of RBP control officials
Brazil	★	NA	□	R
Brunei Darussalam	★	R	--	--
Bulgaria	R	R	--	--
Chile	★	□	□	★
China	★	★	R	R
Colombia	★	R	--	--
Costa Rica	R	R	--	--
Cuba	★	★	--	--
Democratic People's Republic of Korea	★	R	--	--
Dubai	R	R	--	--
Ecuador	★	R	--	--
Ghana	★	★	**	R + P
Guinea	★	★	R	--
Indonesia	★	★	R	R
Kenya	★	★	□	★
Madagascar	NA	R	--	--
Mexico	★	R	--	--
Morocco	★	R	--	--
Nigeria	★	R + P	R + P	R + P
Oman	--	R	--	--
Pakistan	★	NA	□	--
Peru	★	★	□	R
Romania	R	R	--	--
Sri Lanka	★	NA	□	★
Thailand	★	R	--	--
Trinidad and Tobago	★	R	--	--
Tunisia	★	R + P	R	R
Zambia	★	★	P	--

Note: ★ = Action has taken place; R = Action has been requested; P = Action is planned; □ Country has a law; ** = Drafting of legislation in progress; -- = No action presently planned; NA = Not applicable.

III. PROPOSALS FOR FUTURE TECHNICAL ASSISTANCE ACTIVITIES

21. The Second Review Conference, in paragraph 12 of its resolution, invited the UNCTAD secretariat to "suggest priorities from among the different types of technical assistance set out in paragraph 71 of its report [TD/RBP/CONF.3/4] and taking into account the three categories of countries requesting assistance identified in paragraph 3 above - "i.e. those without any restrictive business practices legislation, those in the process of adopting such legislation, and those which have already adopted and seek to enforce these laws more effectively.

22. In its approach to technical assistance, the secretariat has been guided by the priorities mentioned above. However, importance has also been given to the geographical proximity of countries in order to achieve the maximum results by responding to as many requests as possible with a single round-trip ticket. Hence, when in a given region for one event, the secretariat tries to group two or even three seminars back-to-back. In 1991, as described above, in addition to Africa, a considerable effort has been devoted to Asia. Next year will probably witness a concentration of efforts more in the direction of Latin America, subject to the availability of resources.

23. Given the magnitude of the requests indicated in table 1 above, the pace of response of the secretariat will be dependent upon available financial and other contributions. It is hoped that UNDP will continue to support this work, as well as donor countries acting in their capacity of voluntary contributors to UNCTAD's RBP Trust Fund. It is evident, however, that the best means for countries to ensure that technical assistance is provided in this area is to integrate a full restrictive business practices programme into their UNDP country programme, as described above with respect to Ghana and Zambia.

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INFORMATION AND CONSULTATIONS ON RESTRICTIVE BUSINESS PRACTICES

Communication received from the OECD

The UNCTAD secretariat has received the following communication from the OECD, on behalf of the countries members of Group B :

"In accordance with paragraph 9 of the Resolution adopted by the Second United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, Group B would like to suggest that multilateral consultations should take place under item 4 (b) of the provisional agendal for the tenth session of the Intergovernmental Group of Experts on the following topics:

"(a) the detection and control of cartels, and

"(b) methods of enforcing RBP laws and the sanctions applied.

" If other countries and Groups agree, it is suggested that a half-day should be devoted to each topic. On behalf of Group B, France will take the lead in introducing topic (a) and Germany will take the lead on topic (b). Of course, all countries are invited to make contributions to the discussions, whether written or oral."